

CITY MANAGER EMPLOYMENT AGREEMENT

between the

City of San Marino

and

John T. Schaefer

dated

July 1, 2012

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CITY MANAGER EMPLOYMENT AGREEMENT

**between the
City of San Marino
and
John T. Schaefer**

1. Parties and Date

This Agreement is entered into as of July 1, 2012, by and between the City of San Marino, California, a municipal corporation (the "City"), and John Schaefer, an individual (the "City Manager"). The City and the City Manager are sometimes individually referred to as a "Party" and collectively as "Parties."

- A. The City requires the services of a City Manager.
- B. The City Manager has the necessary education, experience, skills and expertise to serve as the City's City Manager; and
- C. The City Council of the City (the "City Council") desires to employ the City Manager to serve as the City Manager of City.
- D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.
- E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

2. Employment

The City hereby employs the City Manager as its City Manager, effective July 1, 2012, and the City Manager hereby accepts such employment. The initial term of this Agreement shall be for one year, through and including June 30, 2013. The City Council, in its sole discretion, may renew this Agreement for two additional one year renewal terms, through and including June 30, 2014 and June 30, 2015, subject to the terms of this Agreement. The City Council will consider renewal by March 31, prior to the expiration of any term. In the event the City Council does not elect to renew this Agreement, the Parties' employment relationship and City Manager's appointment as City Manager shall end at the expiration of the given term unless the Agreement is otherwise terminated. In consideration of the agreed term and the other provisions of this Agreement, the Parties mutually agree to waive San Marino Municipal Code Section 02.03.10 (Removal) in all circumstances where it may otherwise apply, if any.

A. The City Manager's Commitments

(1) Duties & Authority

- (a) The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
- (b) The City Manager shall perform all of the duties of the City Manager as set forth in the San Marino Municipal Code (the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time. The City Manager shall also perform other legally permissible and proper duties and functions as the City Council may assign from time to time.
- (c) The City Council may also designate the City Manager as the chief executive of other City-related legal entities. Such other legal entities could include financing authorities, and joint powers authorities.
- (d) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies.
- (e) To accomplish this, the City Manager shall have the power and shall be required to:
 - (i) Attend all meetings of the City Council, unless excused by the Mayor, and take part in the discussion of all matters before the City Council. The City Manager shall receive notice of all regular and special meetings of the City Council.
 - (ii) Review all agenda documents before preparing the agenda for any regular or special meetings of the City Council.
 - (iii) Direct the work of all elective and appointive City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of City affairs.
 - (iv) Recommend to the City Council from time to time, adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of

the community or for the improvement of administrative services.

- (v) Conduct research in administrative practices in order to bring about greater efficiency and economy in City government, and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.
- (vi) Provide management training and develop leadership qualities among department heads and staff as necessary to build a City management team that can plan for and meet future challenges.
- (vii) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.

(2) Hours of Work

- (a) The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times.
- (b) The City Manager may engage in teaching, consulting, speaking, or perform other non-City connected activities for which he is compensated only with the express prior consent of the City Council.

(3) Disability or inability to perform

In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months, the City Council may terminate the City Manager. If the City Council does elect to terminate the City Manager due to incapacity, the City Manager shall receive severance benefits provided in Section 4.C below.

B. City Council Commitments

- (1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.
- (2) The City Council commits to spending time each year to work with the City Manager and staff on setting goals and priorities for the City government.
- (3) Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and

consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.

- (4) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.

C. Mutual Commitments

(1) Performance Evaluation and Goals

The City Council shall conduct an annual review of the City Manager during January of each year in accordance with specific criteria developed by the City Council or a designated member or members of the City Council. Such criteria may be added to or deleted as the City Council may determine from time to time.

(2) ICMA Code of Ethics

The Parties mutually desire that the City Manager be subject to and comply with the International City/County Management Association ("ICMA") Code of Ethics (Attached as Exhibit A). The guideline under Item 7 of the Code addressing Elections will only apply to City of San Marino elections.

3. **COMPENSATION**

The City agrees to provide the following compensation to the City Manager during the term of the agreement:

A. Compensation & Required Employer Costs

(1) Base Salary

- (a) The annual base salary for the position of City Manager shall initially be \$180,000. In the event the City Council elects the first renewal term for July 1, 2013 – June 30, 2014, as provided above, the annual base salary shall be \$185,000. In the event the City Council elects the second renewal term for July 1, 2014 – June 30, 2015, as provided above, the annual base salary shall be \$190,000. The City Manager shall be paid at the same intervals and in the same manner as regular City employees.
- (b) The City shall not at any time during the term of this Agreement reduce the base salary, compensation or other financial benefits of the City Manager, unless as part of a general City management salary reduction, and then in no greater percentage than the average reduction of all City department heads whose salaries are reduced.

(2) Required Employer Costs

- (a) Federal Insurance Contributions Act (FICA) (if applicable to the same extent provided other City employees)
 - (i) Old Age Survivor and Disability Income (OASDI)
 - (ii) Medicare
- (b) Unemployment Compensation to the same extent provided other City employees.
- (c) Public Employees Retirement System (PERS).

The City contracts with the California Public Employees' Retirement System for retirement benefits. The City will pay only the City's portion and the City Manager is responsible for paying the employees portion for participation in the Public Employees' Retirement System. The PERS benefit shall be based upon a three year average and 2%@60 formula.
- (d) The cost of any fidelity or other bonds required by law for the City Manager.
- (e) Workers Compensation to the same extent provided other employees of the City.

B. Basic Benefits

(1) Leave Allowances

The City Manager shall be entitled to 120 hours of vacation leave annually which is accrued on a monthly basis. In addition, the City Manager is entitled 80 hours administrative leave that is advanced July 1st of each year.

(2) Automobile Allowance

The City Manager shall be provided a monthly auto allowance of \$600 in exchange for making a vehicle available for the City Manager's own use and for City-related business and/or functions during, before and after normal work hours. By the City Manager making the City Manager's personal automobile available for use, the City Manager is not precluded from using City vehicles for City business during the normal workday on occasion, when appropriate.

(3) Technology Allowance

The City Manager shall be provided a monthly technology allowance of \$200 in exchange for making a personal cell phone, computer, and/or internet service available for the City Manager's own use and for City-

related business and/or functions during, before and after normal work hours.

(4) Deferred Compensation – Section 401(a) Plan

City shall contribute an amount equal to four percent (4%) of employee's base salary to the ICMA 401(a) deferred compensation plan. This payment shall be in addition to the base salary.

(5) Cash out of Administrative Leave

All unused Administrative Leave time shall be cashed out annually in July of each year at June 30th rate in which the Administrative Leave time was accrued.

(6) Other Benefits

The City Manager shall be entitled to benefits as provided in Sections 5 (Medical and Other Health Benefits including Retiree Participation) and 7 (Holidays) of the City's Management Employees-Salary and Benefits Schedule as in effect on July 1, 2012. The City Manager shall be entitled to sick leave benefits as described in Section 8 of the Management Employees Salary and Benefits Schedule. The City Manager's existing sick leave and sick bank currently accrued will be carried over to the new position and sick time can be used to purchase service credit at separation, to the extent permitted by the City's contract with PERS.

4. SEPARATION

A. Resignation/Retirement

The City Manager may resign at any time and agrees to give the City at least 45 days advance written notice of the effective date of the City Manager's resignation, unless the Parties otherwise agree in writing. If the City Manager retires from full time public service with the City, the City Manager shall provide three months' advance notice. The City Manager's actual retirement date will be mutually established.

B. Termination & Removal

- (1) Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.
- (2) The City Council may remove the City Manager at any time, with or without cause, by a majority vote of its members.

C. Severance Pay

- (1) In the event the City Manager is terminated by the City Council during the first year of this Agreement and while the City Manager is willing and able to perform the City Manager's duties under this Agreement, then in that

event the City agrees to pay the City Manager a lump sum cash payment equal to the remaining months or partial months of salary that he would have otherwise received up to and including June 30, 2013.

- (2) The City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act Of 1986 (COBRA). The City agrees to pay the City Manager's COBRA coverage for the same number of months for which the City Manager is entitled to a lump sum cash payment under Section 4.C(1), or until Employee either secures and begins full-time employment or obtains other health insurance, whichever of these three events first occurs. The City Manager shall notify the City within five days of securing new full-time employment or insurance.
- (3) All payments required under Sections 4.C(1) and (2) are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260. Further, in the event City Manager is convicted of a crime involving an abuse of office or position, City Manager shall reimburse the City for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 – 53243.4.

D. Separation for Cause

- (1) Notwithstanding the provisions of Section 4.C, the City Manager may be terminated for cause. As used in this section, "cause" shall mean only one or more the following:
 - (a) Conviction of a felony or any misdemeanor under the Political Reform Act or Government Code Section 1090;
 - (b) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties; or
 - (c) Repeated and protracted unexcused absences from the City Manager's office and duties.
- (2) In the event the City terminates the City Manager for cause, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination, payments required by Section E below, and such other termination benefits and payments as may be required by law. The City Manager shall not be entitled to any severance benefits provided by Section 4.C.

E. Payment for Unused Leave Balance

- (1) On separation from City employment, the City Manager shall be paid for all unused accrued leave allowances provided in Section 3.B(1), and/or the City Manager may apply the leave time to service credit for retirement purposes if permitted by PERS. Accumulated leave balances shall be

paid at the City Manager's monthly salary rate at the effective date of separation.

- (2) In the event the City Manager dies while employed by the City under this Agreement, the City Manager's beneficiaries or those entitled to the City Manager's estate, shall be entitled to the City Manager's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

5. MISCELLANEOUS PROVISIONS

A. Provisions that Survive Separation

Section 5.D shall survive separation and termination of this Agreement.

B. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

C. Conflict of Interest

- (1) The City Manager shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations.
- (2) The City Manager shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager's City employment.
- (3) The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

D. Indemnification

- (1) In accordance with and to the extent provided by California's Tort Claims Act (Government Code Section 825 et seq.) and Government Code Sections 995-996.5, the City shall defend and indemnify the City Manager against and for all losses sustained by the City Manager in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of the City Manager's employment.
- (2) In the event that the City Manager shall serve as the chief executive of other City-related legal entities as provided in Sections 2.A(1)(b) or (c), then Section 5.D(1) shall be equally applicable to each City-related legal

entity as though set forth in an indemnity agreement between the City Manager and that legal entity. The City hereby guarantees the performance of this indemnity obligation by the City-related legal entity, and shall indemnify and hold the City Manager harmless against any failure or refusal by City-related legal entity to perform its obligations under this Section.

- (3) Without limiting the application of 5.D(2), nothing in this agreement shall expand the City's defense and indemnification obligations beyond those provided in the Government Code Tort Claims Act (Government Code Section 825, et seq.) and Government Code Sections 995-996.5. Further, in the event City provides funds for legal criminal defense pursuant to this sub-section and terms of the Government Code, City Manager shall reimburse the City for such legal criminal defense funds if City Manager is convicted of a crime involving an abuse of office or position, as provided by Government Code Sections 53243 – 53243.4.

E. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

F. Laws Affecting Title

In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state or federal laws.

G. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Los Angeles County, California.

H. Entire Agreement

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

I. Notice

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Manager or the City shall be required, or may desire, to make shall be in writing

and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

(1) If to the City:

City Clerk
City of San Marino
2200 Huntington Drive
San Marino, CA 91108

(2) If to the City Manager:

John T. Schaefer
City Manager
City of San Marino
2200 Huntington Drive
San Marino, CA 91108

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

"City"

"City Manager"

CITY OF SAN MARINO
A Municipal Corporation

By: _____

Mayor

John T. Schaefer

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM:

By: _____

City Attorney